UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

ELIZABETH PENDERGAST,

Plaintiff,

v. **Case No. 05-C-0051**[1]

WE ENERGIES,
ATTORNEY LYNN ENGLISH,
ANN BRHELY,
RALPH BENSON,
BOB BREHDELMUEHL,
GARY KENNEY,
MARK RUTOWSKI,
DON STAFANICH,
JOHN KRISBAUM,
KARL NENNIG,

Defendants.

ELIZABETH PENDERGAST,

Plaintiff,

v. **Case No. 05-C-0070**

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& ENER. UNION,

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[1]The Court has addressed these seven actions in a single decision. These actions have not been consolidated. When referred to separately, the cases will be referred to by number; e.g., the "05-C-51 action."

AL TARNOWSKI,
JEFF KAMINSKI,
MARK PSICIHULIS,
VERNON BOWLES,
THOMAS PENDERGAST,
CHUCK PRENTICE,
DAN DOKA,
JACKIE SULEWSKI, and
GARY HAGG,

Defendants.

ELIZABETH PENDERGAST,

Plaintiff,

v. **Case No. 05-C-0080**

DARLENE HOWARD, and
PAMELA HINES,

Defendants.

ELIZABETH PENDERGAST,

Plaintiff,

v. **Case No. 05-C-0081**

ALICE O'MAHAR,

Defendant.

ELIZABETH PENDERGAST,

Plaintiff,

v. **Case No. 05-C-0082**

MELINDA SCHIPO,
TRACEY BUNKER, and
JERRLYN I. McNAIR,

Defendants.

ELIZABETH PENDERGAST,

Plaintiff,

v. **Case No. 05-C-0086**

UTILIQUEST, and
VICKIE ORGAS,

Defendants.

ELIZABETH PENDERGAST,

Plaintiff,

v. **Case No. 05-C-0087**

SM&P,
SUPERIOR ELECTRIC,
JEFF ULMAN,
KEVIN KRAKE,
KERRY KRAKE, and
NICOLE SERRA,

Defendants.

DECISION AND ORDER

The plaintiff, Elizabeth Pendergast ("Pendergast"), seeks reconsideration this Court's February 3, 2005, decision and order denying her leave to proceed *in forma pauperis* and appointment of counsel in the seven above-captioned actions. Pendergast has submitted amended petitions and affidavits for leave to proceed *in forma pauperis*.[2]

In considering Pendergast's request to proceed *in forma pauperis* in these actions, the Court must make two determinations: (1) whether the litigant is unable to pay the costs of commencing the action; and (2) whether the action warrants dismissal because it is frivolous or malicious, fails to state a claim on which relief may be granted, or seeks monetary relief against a defendant who is immune from such relief. 28 U.S.C. §§ 1915(a)(1) & (e)(2).

Pendergast's amended petitions and affidavits for leave to proceed *in forma pauperis* state that she is presently unemployed and has not had gainful employment since March 19, 2004. She receives monthly long-term disability benefits from her former employer of $771.28 and monthly social security disability benefits of $1657.00 – a significant income. She has $223.00 in a checking account,

[2]Motions to amend and to add parties are also pending in the 05-C-0051, 05-C-70 and 05-C-81 actions. Such motions will not be addressed given the current status of those cases.

$29.60 in a saving account and owns a 1998 Trans Am valued at $6,000 and a 1992 General Motors Corporation truck valued at $11,500.

Pendergast filed a Chapter 7 bankruptcy petition in this district on December 27, 2004 – Case No. 04-3763-JES. Pendergast indicates that she has reaffirmed four debts, so she continues to make payment on those debts despite her bankruptcy filing. Pendergast's monthly payments on these reaffirmed debts total $1,549.06. Thus, Pendergast's monthly expenses including her reaffirmed debts of $3,240 exceed her monthly income of $2,019.[3]

Pendergast's budget is tight and she is over-extended. However, she also has valuable assets – two vehicles which by her own say so are worth $17,500. Under the circumstances of this case, this Court cannot conclude that Pendergast falls within the limited group those persons who are unable to pay the $150 filing fee for commencing civil actions. Having reviewed Pendergast's amended petitions and affidavits, the Court concludes that she has failed to demonstrate an inability to pay the $150.00 filing fee for her actions.

Because Pendergast has failed to show that she is unable to afford the cost of filing her action, the Court need not proceed to the second step of the *in forma pauperis* analysis and ask whether any of the seven actions warrants dismissal because it is frivolous or malicious, fails to state a claim on which relief may be granted, or

[3]Pendergast is paying $400 per month to WE Energies on a total debt of $1,816.06.

seeks monetary relief against a defendant who is immune from such relief. 28 U.S.C. §§ 1915(a)(1) & (e)(2). Likewise, it will deny Pendergast's renewed requests for appointment of counsel as moot.

The March 27, 20005, deadline for payment of the filing fees passed while Pendergast's motions for reconsideration were pending. Therefore, the Court will give her until May 27, 2005, to pay the filing fee for any of these actions with which she wants to proceed.

NOW, THEREFORE, BASED ON THE FOREGOING, IT IS HEREBY ORDERED THAT:

Pendergast's Amended Petitions for Leave to Proceed *in Forma Pauperis* in Case No. 05-C-0051, 05-C-0070, 05-C-0080, 05-C-0081, 05-C-0082, 05-C-0086, 05-C-0087 are **DENIED**;

Pendergast's Motions for Reconsideration of this Court's February 3, 2005, Decision and Order denying her leave to proceed *in forma pauperis* and her motions for appointment of counsel in Case No. 05-C-0051, No. 05-C-0070, No. 05-C-0080, No. 05-C-0081, No. 05-C-0082, No. 05-C-0086, No. 05-C-0087, are **DENIED** without prejudice;

To maintain Case No. 05-C-0051, No. 05-C-0070, No. 05-C-0080, No. 05-C-81, No. 05-C-0082, No. 05-C-0086, and/or No. 05-C-0087, Pendergast **SHALL** pay the requisite filing fee in those actions **no later than May 27, 2005**; and,

If the fee has not been paid in any of these actions by **May 27, 2005**, those actions in which the fee has not been paid will be **DISMISSED** without further order of the Court.

Dated at Milwaukee, Wisconsin this 3rd day of May, 2005.

BY THE COURT

s/ Rudolph T. Randa
Hon. Rudolph T. Randa
Chief Judge